A

LEMBAGA LEBUHRAYA MALAYSIA

v.

SEMENYIH JAYA SDN BHD

B

COURT OF APPEAL, PUTRAJAYA
ABDUL MALIK ISHAK JCA
KN SEGARA JCA
JEFFREY TAN JCA
[CIVIL APPEAL NO: B-01-75-2007]

C

1 JUNE 2010

CIVIL PROCEDURE: *Locus standi - Land reference proceedings - Whether applicant for land reference had locus standi - Liberalisation of rule of locus standi to seek judicial redress*

D

CIVIL PROCEDURE: *Striking out - Action - Application for - Application to strike out land reference proceedings on grounds of want of locus standi - Whether party seeking land reference a "person interested" within meaning of Land Acquisition Act 1960 - Whether striking out application irregular and unauthorized under provisions of LAA 1960*

E

EVIDENCE: *Judicial notice - Matters that are so notorious or clearly established - Whether court could take judicial notice of the fact that applicant was governing body authorised to deal with all matters pertaining to highways in Malaysia*

F

LAND LAW: *Acquisition of land - Compensation - Award by Land Administrator - Land acquired for building of highway - Applicant objecting to amount of award - Applicant governing body authorised to deal with all matters pertaining to highways - Applicant responsible for*

G

paying compensation awarded - Whether applicant had locus standi - Whether applicant a "person interested" within meaning of Land Acquisition Act 1960

WORDS AND PHRASES: *'Person interested' - Meaning of - Purposive interpretation - Land Acquisition Act 1960 s. 37*

H

The respondent/intervener was the registered proprietor of a piece of land in daerah Ulu Langat ("the land"). Pursuant to the Land Acquisition Act 1960 ("LAA"), the Land Administrator acquired part of the land for the purposes of "Projek Lebuhraya Kajang-

I

Seremban" ('the project'). Pursuant to an enquiry, compensation was assessed in the sum of RM20,862,281.75 payable to the

respondent ('the award'). The appellant/applicant lodged an objection against the award on the ground that the award was excessive. By way of a summons in chambers, the respondent applied pursuant to O. 18 r. 19(1)(b) or (c) or (d), O. 15 r. 6(2) and O. 92 r. 4 of the Rules of the High Court, 1980 ('RHC') and pursuant to s. 45(2) of the LAA for the reference to court by the appellant to be struck out and/or dismissed on the grounds of *locus standi*. The learned Judicial Commissioner allowed the respondent's application and struck off the appellant's objection. Hence this appeal. The issue to be determined was whether the appellant had the *locus standi* to object to the amount of compensation awarded by the Land Administrator.

Held (allowing the appeal with costs)
Per Abdul Malik Ishak JCA delivering majority judgment:

(1) The land was acquired for "Projek Lebuhraya Kajang-Seremban" and it fell squarely within s. 3(1)(b) of the LAA. (para 29)

(2) The appellant was the governing body authorised to deal with all matters pertaining to highways and the court could take judicial notice of this fact. Courts will take judicial notice of various matters that are so notorious or clearly established that evidence of their existence is unnecessary. Since judicial notice had been taken that the appellant was authorised to deal with all matters concerning highways in Malaysia, it was thus reasonable to draw the conclusion that the acquisition of the land was made on behalf of the appellant for the Project. Thus, the appellant had the necessary *locus standi* to bring the reference. The appellant had "sufficient interest" in the matter. (paras 31-34)

(3) There is a growing tendency towards liberalisation of the rule of *locus standi* to seek judicial redress against complaints of maladministration. The rule of standing has to be relaxed and enlarged so that the class of persons who are entitled to go to the courts to protest against arbitrary decisions of the administrative bodies and seek redress is widened. (para 42)

(4) Since the appellant was responsible to take care of the highways in Malaysia, surely *locus standi* should be given to the appellant bearing in mind that the "paymaster" was none other than the appellant. The appellant as the paymaster could not

A be labelled as a meddlesome busybody. Adopting a purposive approach, the appellant was, pursuant to s. 37(3) of the LAA, a person interested and may make objections on any of the grounds specified in s. 37(1) of the LAA. (para 45)

B **Per KN Segara JCA:**

(1) The procedure by the said summons in chambers was wholly irregular and unauthorized under the provisions of the LAA 1960. The summons in chambers ought to have been struck off *in limine* by the High Court judge. Land Reference C proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings. (para 78)

Bahasa Malaysia *Translation Of Headnotes*

D Responden/pencelah adalah pemilik berdaftar sebidang tanah di daerah Ulu Langat ('tanah tersebut'). Mengikut Akta Pengambilan Tanah 1960 ('APT'), Pantadbir Tanah memperolehi sebahagian tanah tersebut bagi tujuan-tujuan 'Projek Lebuhraya Kajang-Seremban' ('projek'). Berikutan satu siasatan, pampasan telah E ditaksirkan dalam jumlah RM20,862,281.75 untuk dibayarkan kepada responden ('award'). Perayu/pemohon membuat satu bantahan terhadap award atas alasan bahawa award adalah berlebihan. Melalui saman-dalam-kamar, responden memohon di bawah A. 18 k. 19(1)(b) atau (c) atau (d), A. 15 k. 6(2) dan F A. 92 k. 4 Kaedah-kaedah Mahkamah Tinggi 1980 dan di bawah s. 45(2) APT untuk rujukan kepada mahkamah oleh perayu dibatalkan dan/atau ditolak atas alasan-alasan *locus standi*. Yang arif Pesuruhjaya Kehakiman membenarkan permohonan responden dan membatalkan bantahan responden. Oleh itu rayuan ini. Isu yang G perlu diputuskan adalah sama ada perayu mempunyai *locus standi* untuk membantah jumlah pampasan yang telah diawardkan oleh Pentadbir Tanah.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Abdul Malik Ishak HMR menyampaikan penghakiman H majoriti:

(1) Tanah tersebut telah diperolehi untuk 'Projek Lebuhraya Kajang - Seremban' dan ia terjatuh betul-betul di bawah s. 3(1)(b) APT.

I

(2) Perayu adalah badan pentadbiran yang diberikuasa untuk mengendalikan semua perkara-perkara berkaitan dengan lebuhraya-lebuhraya dan mahkamah perlu mengambil notis kehakiman mengenai fakta itu. Mahkamah-mahkamah akan mengambil notis kehakiman mengenai beberapa perkara-perkara yang tidak baik langsung atau telah dibuktikan dengan jelas sehingga keterangan kewujudan mereka tidak diperlukan. Oleh kerana notis kehakiman telah diambil bahawa perayu diberikuasa untuk mengendalikan semua halperkara berhubungan dengan lebuhraya-lebuhraya di Malaysia, ia adalah munasabah untuk membuat kesimpulan bahawa pemerolehan tanah itu dibuat bagi pihak perayu untuk projek. Oleh itu, perayu mempunyai '*locus standi*' untuk membawa rujukan. Perayu mempunyai 'kepentingan yang mencukupi' di dalam perkara itu.

(3) Terdapat satu kecenderungan hidup ke arah liberalisasi mengenai peraturan *locus standi* untuk mendapatkan pembetulan kehakiman terhadap aduan-aduan perbuatan salahtadbir. Kaedah wibawa perlu dilonggarkan dan dibesarkan supaya golongan orang yang layak pergi ke mahkamah untuk mendapatkan perlindungan daripada keputusan-keputusan sembarangan badan-badan pentadbiran dan meminta tebus rugi diperluaskan.

(4) Oleh kerana perayu bertanggungjawab untuk mengendalikan lebuhraya-lebuhraya di Malaysia, pastinya *locus standi* diberi kepada perayu sedangkan 'pembayar gaji' tidak lain dan tidak bukan perayu. Perayu sebagai pembayar gaji tidak boleh diberi label sebagai seorang yang penyibuk. Menerimapakai satu pendekatan bertujuan, perayu adalah, mengikut s. 37(3) APT, seseorang berkepentingan dan boleh membuat bantahan ke atas apa-apa alasan yang ditetapkan di dalam s. 37(1) APT.

Oleh KN Segara HMR:

(1) Prosedur melalui saman dalam kamar adalah secara keseluruhan tidak teratur dan tidak sah di bawah peruntukan-peruntukan APT 1960. Saman dalam kamar sepatutnya ditolak *in limine* oleh Hakim Mahkamah Tinggi. Prosiding rujukan tanah tidak seharusnya dilanjutkan dan dilewatkan dalam Mahkamah Tinggi oleh prosiding interlokutori yang tidak diperlukan.

Case(s) referred to:

Blackburn v. Attorney-General [1971] 2 All ER 1380 ***(refd)***
Bryant v. Foot [1868] 37 Trinity Term 217 ***(refd)***
Case of The Oxford Poor Rate [1857] 8 EL & BL 184 ***(refd)***
Dennis v. AJ White & Co [1916] 2 KB 1 ***(refd)***
Hockin v. Cooke [1791] 4 TR 315 ***(refd)***
In Re An Advocate & Solicitor; Ex Parte The Law Society of Singapore for Judicial Review [1985] 1 LNS 18 HC ***(refd)***
Ingram v. Percival [1969] 1 QB 548 ***(refd)***
Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 ***(refd)***
Jose Alexandro Ferreira Brandao v. George Henry Barnett and Others [1846] 12 Cl & F 787 ***(refd)***
Kearney v. King [1819] 2 B & Ald 302 ***(refd)***
Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2010] 4 CLJ 419 CA ***(refd)***
Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor [1995] 4 CLJ 477 CA ***(refd)***
Nothman v. Barnet London Borough Council [1978] 1 WLR 220 ***(refd)***
Pembangunan Maha Murni Sdn Bhd v. Jururus Ladang Sdn Bhd [1985] 1 LNS 122 SC ***(refd)***
Pepper (Inspector of Taxes) v. Hart And Related Appeals [1993] 1 All ER 42 ***(refd)***
R v. Inspectorate of Pollution And Another, ex parte Greenpeace Ltd (No 2) [1994] 4 All ER 329 ***(refd)***
R v. Metropolitan Police Commissioner, Ex parte Blackburn [1968] 1 All ER 763 ***(refd)***
R v. Metropolitan Police Commissioner, ex parte Blackburn And Another (No 3) [1973] 1 All ER 324 ***(refd)***
Regina v. Secretary of State for Foreign and Commonwealth Affairs, Ex parte Rees-Mogg [1994] QB 552 ***(refd)***
Reginald Watson Jones [1970] 54 Cr App R 63 ***(refd)***
Rex v. Frederick Rosser [1836] 7 C & P 648 ***(refd)***
Reynolds v. Llanelly Associated Tinplate Co, Ltd [1948] 1 All ER 140 ***(refd)***
Taylor v. Barclay [1828] 2 Sim 213 ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 56, 57
Highway Authority Malaysia (Incorporation) Act 1980, s. 22(1)
Land Acquisition Act 1960, ss. 2, 3(1)(a), (b), 4(1), (3), 5, 7, 8(1), 12, 16, 36(1), (2), 37(1), (3), 38(1), 43, 44, 45(2), 52
Rules of the High Court 1980, O. 14A, O. 15 r. 6(2), O. 18 rr. 19(1)(b), (c), (d), O. 33 r. 2, O. 92 r. 4

Other source(s) referred to:

Bernard Schwartz, *Administrative Law - A Case Book*, 1983, 2nd edn, pp 632-659

Sarkar's Law of Evidence, 13th edn, p 606

For the appellant/applicant - Datuk N Chandran (Koh Yew Chong with him); M/s Albar & Partners

For the respondent/intervener - Su Tiang Joo (Pang Kong Leng with him); M/s Cheah Teh & Su

[Appeal from High Court, Shah Alam; Land Reference No: MT3-15-162-1999]

Reported by Amutha Suppayah

JUDGMENT

Abdul Malik Ishak JCA:

Introduction

[1] The respondent intervener - Semenyih Jaya Sdn Bhd, filed an application to strike out the appellant applicant's (Lembaga Lebuhraya Malaysia) land reference under O. 18 r. 19(1) of the Rules of the High Court 1980 ("RHC"). The learned judicial commissioner ("JC") allowed the respondent intervener's application with costs. Aggrieved by that decision, the appellant applicant now appeals to this court.

[2] It must be borne in mind that although the respondent intervener's application to strike out the appellant applicant's objection to the award by the Land Administrator of the district of Ulu Langat was made pursuant to O. 18 r. 19(1) of the RHC, the parties had, by consent, intimated to the learned JC that the application of the respondent intervener be proceeded under O. 14A and O. 33 r. 2 of the RHC.

The Facts Of The Case

[3] The respondent intervener was, at all material times, the registered proprietor of approximately 9.156 hectares of land held under Lot 1883 CT 14408, Mukim Semenyih, Daerah Ulu Langat ("the land").

[4] Pursuant to the Land Acquisition Act 1960 ("LAA"), the Land Administrator of the district of Ulu Langat acquired approximately 8,394 hectares of the land.

[5] The Form "D" issued pursuant to s. 8(1) of the LAA declared the purpose of the acquisition of the land to be for "Projek Lebuhraya Kajang-Seremban" (see the appeal record at Tab "U" at p. 167).

[6] An enquiry was conducted pursuant to s. 12 of the LAA before the Land Administrator of the district of Ulu Langat who then assessed the amount of compensation in the sum of RM20,862,281.75 payable to the respondent intervener as the registered proprietor of the land ("the award"). And the notice of the award together with the offer of compensation dated 28 August 1998 are clearly set out in Form "H" pursuant to s. 16 of the LAA and they can be seen in the appeal record at Tab "U" at pp. 343 and 344.

[7] The appellant applicant lodged an objection against the award on the ground that the award was excessive. Even the learned JC acknowledged this fact in her written grounds of judgment.

[8] The respondent intervener being the registered proprietor of the land also lodged an objection on the ground that the amount of compensation awarded is "inadequate". It is appropriate to mention that the objection of the respondent intervener is presently the subject matter of a land reference case which is still pending and this fact is also acknowledged by the learned JC in her written grounds of judgment.

[9] By way of a summons in chambers dated 25 July 2003, the respondent intervener pursuant to O. 18 rr. 19(1)(b) or (c) or (d) of the RHC and pursuant to O. 15 r. 6(2) of the RHC and pursuant to O. 92 r. 4 of the RHC and pursuant to s. 45(2) of the LAA sought for the following orders:

(a) that the reference to court by the Lembaga Lebuhraya Malaysia *vide* an application that an objection to be referred to court (Form 'N') be struck out and/or dismissed;

(b) that the proceedings herein be stayed pending the disposal of prayer (a) above;

(c) that the costs of this application and any other incidental costs be taxed and paid by the appellant applicant to the respondent intervener; and

(d) such further and/or other reliefs to Semenyih Jaya Sdn Bhd (respondent intervener) as this Honourable Court thinks fair and fit.

[10] The learned JC allowed the respondent intervener's application with costs and, in consequence thereto, she ordered the appellant applicant's objection to be struck out.

[11] It is pertinent to mention that before the learned JC, the respondent intervener had grounded its application on two specific grounds, namely:

(i) *locus standi*; and

(ii) estoppel.

[12] But, the learned JC in her decision saw it fit not to deal with the issue of estoppel and she confined her decision to the issue of *locus standi* only.

Analysis

[13] This appeal concerns one issue only. It is as to whether the appellant applicant has the *locus standi* to make an objection as to the "amount of compensation" awarded by the Land Administrator of the district of Ulu Langat for the matter to be referred to the High Court for determination pursuant to the LAA.

[14] It is the stand of the respondent intervener that the issue of *locus standi* has to be determined based on the state of the law at the point in time when Form "D" pursuant to s. 8 of the LAA was issued. Here, the Form "D" was dated 22 January 1998 and that is said to be the date of reckoning in so far as the state of the law is concerned. Section 8 of the LAA enacts as follows:

8. Declaration that land is required for a public purpose.

(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the Gazette.

A (2) A copy of the list of lands referred to in section 7(b), amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

B (3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

C (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under section 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the D land shall terminate and be of no effect.

(5) Where the declaration under subsection (1) has lapsed, sections 35(2), (3) and (4) shall apply with the necessary modifications.

E **[15]** Perhaps, at this juncture, a bird's eye view of the procedure for land acquisition should be set forth. Everything starts with a pre-acquisition notification under s. 4 of the LAA. Section 4(1) of the LAA is the first step to be undertaken by the State Authority before any land is to be acquired and it reads as follows:

F

4. Preliminary notice.

(1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A G shall be published in the Gazette.

[16] Apart from publishing a notification in the Gazette, the Land Administrator is also required to give a public notice pursuant to s. 52 of the LAA. This public notice is usually referred to as the H pre-acquisition general notice. It must be borne in mind that there is no provision in the LAA for a specific notice to the registered proprietor whose land is sought to be acquired.

[17] The validity of the Form "A" notice pursuant to s. 4(1) of the LAA is for a period of 12 months. This is set out in s. 4(3) I of the LAA which reads as follows:

4. (3) A notification under subsection (1) shall lapse in so far as it relates to any land or part of any land in respect of which there is not published in the Gazette within twelve months from the date of publication of such notification a declaration under section 8(1).

[18] It is within the 12 months' period that the declaration under s. 8(1) of the LAA must be made by the State Authority. And if a s. 8 notification is not made, then the s. 4 notification lapses. Once it lapses, a fresh notification has to be made under s. 4(1) of the LAA provided the State Authority is satisfied that the land to be acquired is still needed for the purpose as stipulated in s. 3 of the LAA.

[19] A notification under s. 4(1) of the LAA is far reaching. It opens the door wide for the survey of the land belonging to the registered proprietor in the concerned locality to be carried out by the servants or agents of the State Authority. This is provided for in s. 5 of the LAA which enacts as follows:

5. Power of entry and survey.

(1) The State Director may by written authority in Form B generally or specifically authorize any officer or person, together with servants and workmen, to enter upon any land in any locality specified in a notification published under section 4, and to do such work as may be specified in such Form.

(2) A person authorized under subsection (1) shall, on demand by the occupier of any land upon which he enters, produce to such occupier his letter of authority in Form B together with a copy of the relevant notification in Form A.

(3) A person authorized under subsection (1) shall not enter into any building or upon any enclosed court or garden attached to a dwelling-house unless:

(a) he has first obtained the consent of the occupier thereof; or

(b) failing such consent, he has given the occupier three days' notice in writing of his intention to do so.

[20] The s. 4 notification allows the servants and agents of the State Authority to positively decide whether the land is to be acquired or not. At the same time, the registered proprietors are put on notice that their land is likely to be acquired.

[21] It is quite apparent that the reading of s. 4(1) of the LAA makes it clear that the issue of notification is mandatory. Likewise, a reading of s. 52 of the LAA makes it mandatory to give the public notice and that section reads as follows:

> 52. Public notice.
>
> Whenever it is provided in this Act that public notice (otherwise than by notification in the Gazette) shall be given of any notification, declaration or other document, sufficient notice thereof shall be deemed to be given if the Land Administrator shall cause copies of such notification, declaration or document to be posted at the District Land Office, on public notice-boards in the mukim or township in which the land to which such notification, declaration or document refers, is situated and in such other places on or near the lands specified in that notification, declaration or document as the Land Administrator may think fit.

[22] Reverting back to the mainstream of the appeal, the respondent intervener emphasises the need to look at the state of the law on 22 January 1998 because that was the date of the issuance of the Form "D" under s. 8(1) of the LAA. And Form "D" merely stated that the land was needed for the purpose of "Projek Lebuhraya Kajang-Seremban." And it does not state that the land was to be acquired on behalf of the appellant applicant.

[23] The respondent intervener even proceeds to argue that the appellant applicant is the "purported" corporation which applied for the land to be acquired on its behalf. The respondent intervener submits that the word "purported" is used because the statutory declaration of acquisition in Form "D" does not mention at all that the land has been acquired on behalf of the appellant applicant.

[24] The respondent intervener points out that there is no evidence that the appellant applicant produced any valuation report during the enquiry before the Land Administrator of the district of Ulu Langat on 6 May 1998. And that the award of compensation by the Land Administrator of the district of Ulu Langat on 6 May 1998 was based on the recommendations of the Pejabat Penilaian dan Perkhidmatan Harta Negeri Selangor.

[25] On the other end of the scale, the appellant applicant seeks to rely on a valuation report by Messrs Rahim & Co dated 3 December 1998. And this valuation report was prepared "only

after" the award was made by the Land Administrator of the district of Ulu Langat on 28 August 1998 as reflected in Form "H" pursuant to s. 16 of the LAA. A

[26] The respondent intervener relies heavily on the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477; [1995] 3 MLJ 710, a decision of this court. That case held that: B

(a) once the Form "D" stipulates that the acquisition was for "public purpose", it would fall within the scope of s. 3(1)(a) of the LAA where the land is acquired by the State Authority itself; and C

(b) the appellant, not being the State Authority, had no *locus standi* to refer the matter to the High Court.

D

[27] It would appear that from the decision of this court in *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor (supra)*, the declaration in Form "D" is of paramount importance. And relying on this authority, the respondent intervener argues, once again, that Form "D" merely declares that the land was required for "Projek Lebuhraya Kajang-Seremban" and that no mention was made at all as to whether the acquisition was made on behalf of the appellant applicant. It is also pointed out by the respondent intervener that there is no affidavit filed by the State Authority to state that the land was acquired for the appellant applicant. E F

[28] The respondent intervener further advances the argument that the appellant applicant has not satisfied the statutory requirement in s. 37(1) of the LAA because the appellant applicant has not "made a claim to the Land Administrator in due time". It is said that the appellant applicant did not make any claim during the enquiry. Flowing from all these, the respondent intervener argues that there is absolutely no evidence before the court that the appellant applicant is the proper party or that the appellant applicant has the *locus standi* to make the reference to the High Court at all. G H

[29] Now, it cannot be denied that the land was acquired for "Projek Lebuhraya Kajang-Seremban" and it falls squarely within s. 3(1)(b) of the LAA which enacts as follows: I

A 3. Acquisition of land.

(1) The State Authority may acquire any land which is needed:

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the
B economic development of Malaysia or any part thereof or to the public generally or any class of the public; or ...

[30] The "Projek Lebuhraya Kajang-Seremban" is certainly beneficial to the economic development of Malaysia.

C **[31]** In Malaysia, it is self-evident that the appellant applicant is the governing body authorised to deal with all matters pertaining to highways. And judicial notice can be taken of such a fact. Sections 56 and 57 of the Evidence Act 1950 deal with judicial notice. It must be emphasised that no fact of which a court of
D law can take judicial notice need be proved. This is an exception, indeed one of the exceptions to the general rule that all facts in issues and relevant facts must be proved by evidence. In the Supreme Court case of *Pembangunan Maha Murni Sdn Bhd v. Jururus Ladang Sdn Bhd* [1985] 1 LNS 122, Syed Agil Barakbah
E SCJ speaking for the Supreme Court had this to say:

> Now, the general rule is that all facts in issue and relevant facts must be proved by evidence. There are, however, two classes of facts which need not be proved, *viz*, (a) facts judicially noticed
F and (b) facts admitted. The exceptions are dealt with by sections 56, 57 and 58 of the Evidence Act 1950 under the title 'Facts which need not be proved'.

[32] According to *Sarkar's Law of Evidence*, 13th edn, at p. 606:

G > The matter of which a court will take judicial notice must be a subject of common and general knowledge. In other words, judicial knowledge of facts is measured by general knowledge of the same facts. A fact is said to be generally recognised or known when its existence or operation is accepted by the public without qualification or contention. The test is whether sufficient notoriety
H attaches to the fact involved as to make it proper to assume its existence without proof.

[33] Judicial notice concerns the acceptance of facts without admission or proof. Courts will certainly take judicial notice of
I various matters that are so notorious or clearly established that evidence of their existence is unnecessary. And according to the

authorities like *Jose Alexandro Ferreira Brandao v. George Henry Barnett and Others* [1846] 12 Cl & F 787 and *Taylor v. Barclay* [1828] 2 Sim 213 such matters that are so notorious or clearly established do not require to be pleaded at all.

[34] The doctrine of judicial notice is wide and far reaching. It extends to all branches of the law and is not confined to evidence only. Judges would vigorously apply the doctrine of judicial notice in respect to matters coming within the sphere of their everyday knowledge and experience as demonstrated in *Rex v. Frederick Rosser* [1836] 7 C & P 648 and approved in *Reginald Watson Jones* [1970] 54 Cr App R 63, 68.

[35] There is a line of authorities which shows that a judge may rely on his own local knowledge provided he acted "properly and within reasonable limits" (per Lord Greene MR in *Reynolds v. Llanelly Associated Tinplate Co, Ltd* [1948] 1 All ER 140, 143, CA). Such a judicial function is acceptable where, "That type of knowledge is of quite a general character and is not liable to be varied by specific individual characteristics of the individual case" (*Reynolds v. Llanelly Associated Tinplate Co, Ltd (supra)* at p. 143).

[36] The court in *Ingram v. Percival* [1969] 1 QB 548 held that justices acted properly in using their knowledge of the local tidal conditions.

[37] Since time immemorial, courts have taken judicial notice of facts which are notorious. Thus, courts have taken judicial notice that in the ordinary course of nature, the standards of weight and measure come within the sphere of everyday knowledge and experience (*Hockin v. Cooke* [1791] 4 TR 315). Courts too have taken judicial notice of the difference in value of the coinage and currency in early and modern times (*Kearney v. King* [1819] 2 B & Ald 302; and *Bryant v. Foot* [1868] 37 Trinity Term 217).

[38] In 1916, courts in England took judicial notice that the streets of London are crowded and dangerous (*Dennis v. AJ White & Co* [1916] 2 KB 1, 6). Likewise, it is also appropriate to take judicial notice that the streets along the Chow Kit market in Kuala Lumpur are crowded and dangerous.

[39] Courts in England also took judicial notice that the Universities of Oxford and Cambridge are national institutions for the advancement of learning and religion (*Case of The Oxford Poor Rate* [1857] 8 EL & BL 184). In the same vein, judicial notice can also be taken of the University of Malaya as a national institution that produced its first batch of law graduates in 1975.

[40] Since judicial notice has been taken that the appellant applicant is authorised to deal with all matters concerning highways in Malaysia, it is thus reasonable to draw the conclusion that the acquisition of the land was made on behalf of the appellant applicant for the "Projek Lebuhraya Kajang-Seremban".

[41] It is our majority judgment that the appellant applicant has the necessary *locus standi* to bring this reference. The appellant applicant has "sufficient interest" in the matter.

[42] There is a growing tendency towards liberalisation of the rule of *locus standi* to seek judicial redress against complaints of maladministration (see Bernard Schwartz, *Administrative Law - A Case Book*, 2nd edn, pp. 632-659 [1983]). It may be argued that if the rule of standing is given its strict interpretation then there may arise a situation when there is no one qualified enough to bring an action in court. If that were to happen, then any bad administrative order may not be reviewed. This would imperil the rule of law. The rule of standing has to be relaxed and enlarged so that the class of persons who are entitled to go to the courts to protest against arbitrary decisions of the administrative bodies and seek redress is widened.

[43] The applicant in *Regina v. Secretary of State for Foreign and Commonwealth Affairs, Ex parte Rees-Mogg* [1994] QB 552 sought for a declaration that the UK government could not lawfully ratify the treaty on European Union. The court accepted that the applicant had the necessary *locus standi* to file the case because in the words of Lloyd LJ at p. 562, the applicant brought "the proceedings because of his sincere concern for constitutional issues".

[44] The court in *R v. Inspectorate of Pollution And Another, ex parte Greenpeace Ltd (No 2)* [1994] 4 All ER 329 gave *locus standi* to Greenpeace, an environmental organisation, to seek *certiorari* on the ground that the prime object of Greenpeace is to protect the natural environment. Otton J in his judgment at p. 350, aptly said:

I have not the slightest reservation that Greenpeace is an entirely responsible and respected body with a genuine concern for the environment.

[45] Here, since the appellant applicant is responsible to take care of the highways in Malaysia, surely *locus standi* should be given to the appellant applicant bearing in mind that the "paymaster" is none other than the appellant applicant. And the irresistible conclusion would be this. That the land was acquired on behalf of the appellant applicant notwithstanding that Form "D" did not stipulate that the acquisition was made on behalf of the appellant applicant and notwithstanding that the State Authority failed to file an affidavit stating that the land was acquired on behalf of the appellant applicant. It must be emphasised that Form "D" declares that the land was required for "Projek Lebuhraya Kajang-Seremban" and that would involve the appellant applicant and no one else. Judicial notice must be taken of the appellant applicant's role in the "Projek Lebuhraya Kajang-Seremban" as the paymaster. Indeed, learned counsel for the respondent intervener agreed that the paymaster for the "Projek Lebuhraya Kajang-Seremban" is the appellant applicant and no one else.

[46] The contentions of learned counsel for the respondent intervener may be summarised in this way:

(a) that the land was acquired for a highway project;

(b) that the acquisition of the land for a highway project is for a "public purpose" by virtue of s. 22(1) of the Highway Authority Malaysia (Incorporation) Act 1980; and

(c) that when the land is acquired for a "public purpose", it rules out the involvement of any corporation including the appellant applicant according to the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor (supra)*.

[47] But the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor (supra)* is distinguishable. That case relates to an acquisition under s. 3(1)(a) of the LAA which enacts as follows:

3. Acquisition of land.

(1) The State Authority may acquire any land which is needed:

(a) for any public purpose.

[48] Abdul Malek bin Ahmad JCA (later PCA) delivering the judgment of the Court of Appeal in *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor (supra)* had this to say at p. 482 of the report:

> Unfortunate for them, learned counsel for the second respondent had pointed out that the so called inconsistencies between s. 3(b) and s. 37(3) of the Act are quite irrelevant to the appeal, as the appellant would not come under s. 3(b) in the first place.
>
> This was because, he said, in the relevant Form D for the proposed acquisition dated 19 February 1993, the purpose was 'bagi tujuan awam iaitu pengwujudan Bandar Baru Nilai, Negeri Sembilan' which means 'for a public purpose that is the creation of the Nilai New Town, Negeri Sembilan' which is further strengthened by para 7 of the State Financial Officer's affidavit filed in support of the application, that it was acquired by the State Authority for the petitioner for a public purpose. Although the words 'for the petitioner' were used, this is merely a circumstantial fact but the public purpose could only come under s. 3(a) of the Act and nowhere else, and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the State Authority, namely the appellant.

[49] It is now opportune to refer to the case of *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2010] 4 CLJ 419, a decision of this court with a coram of Tengku Baharudin Shah, Abdul Malik bin Ishak and Jeffrey Tan Kok Wha JJCA. That case considered the true scope, purport and extent of s. 7 of the LAA read in conjunction with ss. 2 and 3 of the LAA.

[50] The principal issue to be determined in *Cahaya Baru (supra)* pertained to the question of whether the appellant was a person interested within the meaning of s. 37 of the LAA and if the question be answered in the affirmative then the appellant was entitled to object to the award of compensation. At p. 427 of the report, my learned brother Jeffrey Tan Kok Wha JCA puts it nicely in this way:

> (5) In so far as the High Court was concerned, 'The principal issue to be determined is whether the defendant (appellant) is a person interested within the meaning of s. 37. If the question is answered in the affirmative, then the defendant is entitled to object to the award of compensation and to file the Form N to the land administrator requiring that he refer the matter to court for its determination', ...

[51] And after having considered the manner in which the learned judicial commissioner had resolved the issue, my learned brother Jeffrey Tan Kok Wha JCA had this to say in *Cahaya Baru (supra)* at p. 434 of the report:

> (14) As seen hereinbefore, the State Authority had declared the said land as needed for a public purpose, on behalf of the appellant the State Authority had acquired the said land pursuant to s. 3 of the LAA 1960, the appellant had undertaken a work of undoubted public utility which fell plainly within the expression 'public purpose' (for an analogy, see *Ahmad Saman v. Kerajaan Negeri Kedah* [2004] 1 CLJ 211), and the award had exceeded RM15,000. All requirements of s. 37(3) had been met. Thereupon, indeed there and then, the appellant should be deemed to be a person interested under s. 37(1) of the LAA 1960. Also, the appellant fell as well within the category (of) a 'person interested', as s. 2 of the LAA 1960 provides that the 'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under the Act' (see *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor supra*). Really, there was no need for any construction of s. 37, seemingly to be read together with s. 3, which was totally misplaced.

[52] Writing a supporting judgment in *Cahaya Baru (supra)*, Abdul Malik bin Ishak JCA spoke of the duty of the Lembaga Lebuhraya Malaysia, the appellant in that case, who is also the appellant applicant in this appeal, in this way (see p. 439 of the report):

> (33) It must be borne in mind that by virtue of s. 11(1)(a) of the Highway Authority Malaysia (Incorporation) Act 1980, the appellant defendant has a duty to supervise and execute the design, construction and maintenance of highways as determined by the Government of Malaysia.

[53] Continuing at pp. 445 to 446 of the report in the case of *Cahaya Baru (supra)*, Abdul Malik bin Ishak JCA had this to say:

> (59) Reverting back to the mainstream of the appeal, the learned Judicial Commissioner came to a finding that the appellant defendant is not a 'person interested' within the provisions of s. 37(3) of the LAA 1960 and he relied on the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477, a decision of this court. With respect, factually speaking, that case can be distinguished from the facts of the present

appeal. There, the Menteri Besar Negeri Sembilan (Pemerbadanan) is a statutory body with powers to undertake ventures of a commercial or industrial nature independently or jointly with another company. Here, the appellant defendant is a statutory agency of the Ministry of Public Works and has a statutory duty to supervise and execute the design, construction and maintenance of Highways as determined by the Government as provided for in s. 11(1)(a) of the Highway Authority Malaysia (Incorporation) Act 1980. That case did not show nor indicate whether the Land Administrator had served Form 'E' and Form 'G' on the appellant there and whether the appellant there had attended the enquiry. Neither did the case there showed as to who was the 'paymaster' for the award. In that case too, the Form 'D' notice for the proposed acquisition had indicated that the purpose was 'for a public purpose that is the creation of the Nilai New Town'. This therefore ruled out the involvement of any other person on whose behalf the land was acquired by the State Authority. Moreover, all these issues were decided by the Land Reference Court and not by way of an originating summons like the present appeal at hand wherein the respondent plaintiff sought for the declaratory reliefs against the appellant defendant before the learned Judicial Commissioner.

(60) In *Setia Usaha Tetap Kementerian Pelajaran v. Collector of Land Revenue, Butterworth* [1972] 1 LNS 131, the objection to the collector's award was made not by the landowner but rather by the Setia Usaha Kementerian Pelajaran on behalf of the Ministry of Education for whom the land was acquired and such objection was held to be in accordance with s. 37(3) of the LAA 1960. Likewise here, the appellant defendant who was the 'paymaster' objected to the Land Administrator's award and the respondent plaintiff as the landowner had consented, without protest to receive the payment of the compensation after due enquiry by the Land Administrator.

(61) To understand the pith and core of the term 'person interested' an examination of some relevant authorities will now be undertaken. A liberal approach must be adopted in construing the term 'person interested' as intended by the legislature. It must be emphasised that the appellant defendant has an interest in the compensation awarded by the Land Administrator and that would make the appellant defendant as a 'person interested' under s. 2 of the LAA 1960.

[54] To round up the matter, Abdul Malik bin Ishak JCA had this to say in *Cahaya Baru (supra)* (see p. 447 of the report):

> (67) As the 'paymaster', the appellant defendant has the statutory right to file a notice of objection against the quantum of the award by filing Form 'N'. It would be grossly unfair and inequitable to deprive the appellant defendant of its statutory right to have its objections heard and adjudicated by the Land Reference Court. In the words of the Indian Supreme Court in the case of *Himalaya Tiles and Marble (P) Ltd., v. Francis Victor Coutinho (dead) by LR's. (supra)* at p. 1121:
>
> > It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of that expression.

[55] In *Cahaya Baru (supra)*, the land was acquired for the purpose of the Senai Desaru Expressway Project in Johore. Here, the land was acquired for "Projek Lebuhraya Kajang-Seremban". The paymasters for *Cahaya Baru (supra)* and for this appeal are one and the same, the Lembaga Lebuhraya Malaysia.

[56] It cannot be denied that *locus standi* should be accorded to the appellant applicant. It is quite interesting to read the case of *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 (hereinafter referred to as "the *IRC* case"). It lays down the following principles. Firstly, that the issue of standing should be assessed together with the substance of the matter complained of. In other words, the issue of sufficiency of interest should not be analysed separately from the legal and factual basis of any given case. It must be analysed simultaneously. Secondly, Lord Diplock reminded us that outdated technical rule of *locus standi* should not prevent a litigant from bringing the matter to the attention of the court in order to vindicate the rule of law.

[57] What is the effect of the *locus standi* rule? It is to preclude some people from seeking redress in the courts in declaring and enforcing the law.

[58] But can the court refuse to give standing merely on broad discretionary grounds to a litigant who is not prepared to argue a case properly when the decision of the court will affect other people? The answer would certainly be in the negative provided

A the litigant is not a meddlesome busybody. Here, the appellant applicant as the paymaster cannot be labelled as a meddlesome busybody.

[59] Singapore followed the IRC case when dealing with the issue B of standing. In *In Re An Advocate & Solicitor; Ex Parte The Law Society of Singapore for Judicial Review* [1985] 1 LNS 18, an advocate and solicitor practising in Singapore had been charged for various offences in relation to income tax evasion. He was convicted and fined by the court. When the matter went up C before disciplinary committee, the latter deleted certain paragraphs of the law society's statement of the case. The law society swung into action and brought proceedings seeking for, *inter alia*, a *mandamus* directing the disciplinary committee to investigate those deleted paragraphs. It was submitted on behalf of the advocate D and solicitor that the law society did not have the *locus standi* to make the application. The Court of Appeal of Singapore adopted the approach set out in the IRC case when it dealt with the question of sufficient interest and gave standing to the law society.

E **[60]** In England, a liberal approach to *locus standi* was adopted as exemplified in the following cases:

(a) *R v. Metropolitan Police Commissioner, Ex parte Blackburn* [1968] 1 All ER 763, CA;

F (b) *Blackburn v. Attorney-General* [1971] 2 All ER 1380, CA; and

(c) *R v. Metropolitan Police Commissioner, ex parte Blackburn And Another (No 3)* [1973] 1 All ER 324, CA.

[61] *R v. Metropolitan Police Commissioner, Ex parte Blackburn* G *(supra)* was a case where Mr Blackburn applied for a *mandamus* against the Police Commissioner in order to compel the latter to enforce the law against gaming houses. The police refused to take any action and maintained the policy that no proceedings would be taken against clubs for breach of gaming laws unless there H were complaints that these clubs were cheating or were haunts of criminals. Lord Denning was doubtful whether Mr Blackburn had *locus standing* but his Lordship proceeded to hear the case on its merits. Whereas Salmon LJ doubted whether Mr Blackburn had sufficient interest.

I

[62] The case of *Blackburn v. Attorney-General (supra)* concerned the same Mr Blackburn. This time he sought a declaration that by signing the Treaty of Rome, Her Majesty's Government would surrender forever the sovereignty of the Crown in Parliament in breach of the law. Since the action disclosed no reasonable cause of action, it was struck out. Lord Denning was willing to give standing to Mr Blackburn.

[63] In *R v. Metropolitan Police Commissioner, ex parte Blackburn And Another (No 3) (supra)*, the same Mr Blackburn was involved. Together with his wife, Mr Blackburn applied for a *mandamus* to direct the Police Commissioner to enforce the law against those who illegally published and sold pornographic material in breach of the Obscene Publications Act 1959. Both Mr and Mrs Blackburn turned up in court and Mr Blackburn said he was concerned about his five children. The Court of Appeal dismissed Mr and Mrs Blackburn's appeal on the ground that the Court of Appeal would not interfere with the Police Commissioner's discretion and the Court of Appeal proceeded to hear the appeal on the assumption that both Mr and Mrs Blackburn had the necessary *locus standi*.

[64] Before us, the respondent intervener strenuously argued at the bar that the appellant applicant has no *locus standi* to object against the award of compensation by the Land Administrator of the district of Ulu Langat. It sets us wondering whether the appellant applicant is under no obligation, at all, to pay any compensation to the respondent intervener in respect of the acquisition.

[65] The LAA was passed to regulate compulsory acquisition of land in Malaysia. We cannot adopt the literal method in interpreting the LAA. We must move ahead and adopt a more sensible approach. And that would be the purposive approach. It is this approach that commends itself to Lord Denning MR in *Nothman v. Barnet London Borough Council* [1978] 1 WLR 220, CA. There at p. 228, Lord Denning MR had this to say:

> I have read that passage at large because I wish to repudiate it. It sounds to me like a voice from the past. I heard many such words 25 years ago. It is the voice of the strict constructionist. It is the voice of those who go by the letter. It is the voice of those who adopt the strict literal and grammatical construction of the words, heedless of the consequences. Faced with glaring injustice, the judges are, it is said, impotent, incapable and sterile.

A Not so with us in this court. The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach.' He said so in *Kammins Ballrooms Co Ltd v. Zenith Investments (Torquay) Ltd* [1971] AC 850, 899; and it was recommended by Sir David Renton and his colleagues in their valuable report on the Preparation of Legislation (1975) Cmnd. 6053, pp. 135-148. In all cases now in the interpretation of statutes we adopt such a construction as will 'promote the general legislative purpose' underlying the provision. It is no longer necessary for the judges to wring their hands and say: 'There is nothing we can do about it.' Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it-by reading words in, if necessary-so as to do what Parliament would have done, had they had the situation in mind.

[66] Lord Griffiths in *Pepper (Inspector of Taxes) v. Hart And Related Appeals* [1993] 1 All ER 42, HL, at p. 50, aptly said:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

[67] *Pepper (Inspector of Taxes) v. Hart And Related Appeals (supra)* was a classic case. It was a case where the House of Lords accepted, for the first time, that judges could refer to Parliamentary debates reported in Hansard in order to ascertain the meaning of an Act of Parliament.

[68] Adopting a purposive approach, we must give standing to the appellant applicant pursuant to s. 37(3) of the LAA to be "a person interested" and "may make objections on any of the grounds specified in sub-s. (1)" of s. 37 of the LAA.

[69] For the reasons adumbrated above, by way of a majority (Abdul Malik bin Ishak and Jeffrey Tan Kok Wha, JJCA), we allow the appeal with costs of RM10,000. We set aside the decision of the learned JC dated 18 June 2007. The deposit should be refunded to the appellant applicant. We also make an order that Form "N" pursuant to s. 38(1) of the LAA be restored to the file.

[70] My learned brother Jeffrey Tan Kok Wha, JCA agrees that this judgment be the majority judgment of this court.

KN Segara JCA:

[71] The Land Acquisition Act 1960 (LAA1960) is a special act relating to the acquisition of land, the assessment of compensation to be made on account of such acquisition, and matters incidental thereto.

[72] No reference to court under the LAA 1960 may be made otherwise than by the Land Administrator (s. 36(1)). The Land Administrator may, at any time, of his own motion refer to court, in form M, for its determination any question as to, *inter alia*, "(b) the person entitled to a right or interest in land" should he be in doubt, or a dispute in relation thereto is raised by any party (s. 36(2)).

[73] The statutory provisions in the LAA 1960 must be strictly adhered to and made applicable to all relevant parties. All procedural steps leading to a final determination of any award shall be in accordance with the provisions of LAA 1960. The LAA 1960 is a complete and comprehensive Act on substantive law, procedure and forms. It ensures that no person would be deprived of his constitutional right to adequate and fair compensation without proper inquiry, when deprived by the State of his property.

[74] Lembaga Lebuhraya Malaysia had filed an objection to the amount of the award of compensation to Semenyih Jaya Sdn Bhd in form N (s. 38(1)) and the Land Administrator had referred the application to court in form O, dated 27 February 1999 (see Record of Appeal p. 22). This reference to court was apparently registered in the Shah Alam High Court as: Land Reference No MT3-15-162-1999. In para. 3 of form O, the Land Adminstrator listed "Lembaga Lebuhraya Malaysia" as a person having an interest in the land.

[75] Semenyih Jaya Sdn Bhd, the registered owner of the land which was acquired for the "Projek Lebuhraya Kajang - Seremban", was awarded compensation for the acquisition of the land in the sum of RM20,862,281.75 by the Land Administrator, after an enquiry under s. 12 LAA 1960. Semenyih Jaya Sdn Bhd

also filed an objection in form N *vide* the quantum of compensation awarded and the Land Administrator referred the application to court in a separate form O, dated 25 February 1999 (see Record of Appeal p. 157). This reference to court was apparently registered in the Shah Alam High Court as: Land Reference No MT3-15-37-1999. In para. 3 of the said form O, the Land Administrator has listed "Semenyih Jaya Sdn Bhd" as a person having an interest in the land.

[76] Obviously, the Land Administrator had no difficulty in identifying the persons having an interest in land and no issue had been made before him by any party at any time, necessitating resort by him to s. 36(2) LAA 1960.

[77] Both the Land Reference cases, No MT3-15-162-1999 and No MT3-15-37-1999, ought to have been heard together on its merits as to the quantum of compensation, expeditiously in conformity with the provisions of ss. 43, 44 and 45 of LAA 1960. Instead, an application by way of a summons in chambers (p. 24 Record of Appeal) in Land Reference No MT3-15-162-1999 was embarked upon, unnecessarily, by a purported intervener (which intervention has not been sanctioned at all by any order of court), to challenge the *locus standi* of the applicant in the Land Reference No MT3-15-162-1999.

[78] The procedure by the said summons in chambers is wholly irregular and unauthorized under the provisions of the LAA 1960, *vide* a reference to court by the Land Administrator under the LAA 1960. The summons in chambers ought to have been struck off *in limine* by the High Court judge. Land Reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings.